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BOOK REVIEWS.

HISTORY OF THE SUPREME COURT OF THE UNITED STATES. By Gustavus Myers. Charles H. Kerr & Co., Chicago, 1912, pp. 823.

The preface to this book begins with the following sentence: "To a work such as this, avoiding as it does both theories and conclusions, and confining itself strictly to ascertainable facts, little or no prefatory note is required." The hope based upon this promise of a disinterested and impartial examination of the historical facts regarding the Supreme Court is utterly dashed before the reader has covered many pages of the book.

The truth is that while the author has probably made laborious examination of a great mass of facts he has written anything but a history or a dispassionate commentary. Mr. Myers had previously written books on the "History of the Great American Fortunes" and a "History of Tammany Hall," and a learned colleague of the writer of this review has suggested that the author has translated his views of Tammany Hall into his account of the United States Supreme Court.

There is just one thesis in this book and that is that the constitution of the United States was framed, and its provisions and the law arising therefrom have been interpreted and fixed by the members of the Supreme Court, in the interest of corporate and other wealth and against the interest of the so-called working classes.

The first chapter, which is entitled "Conditions Preceding Establishment of the Supreme Court," concludes as follows: "All the conditions, the varied demands and contests and the laws and traditions put in force by the governing classes, as well as the traditional subjugation of the working classes, were later reflected in the personnel of the Supreme Court of the United States selected to enforce and augment the powers by which the ruling classes benefited."

The greater part of the book is given up to a consideration of the personnel of the court from its organization to the present time. A great mass of detail taken from almost every source, authentic and unauthentic, is marshalled for the purpose of showing that all of the members of the court, by reason of family connections, class or party bias, or actual monetary interest, were influenced to so distort or declare the law as to favor the so-called governing classes, even at the expense of violation of truth, law and equity.

Mr. Myers grudgingly admits that "in the case of men whose minds are already permanently moulded to such purposes, and whose character and station forbid the use of illicit means, immeasurable subservience can be obtained which crude and vulgar money bribery would hopelessly fail to accomplish." Most of the justices are therefore not corrupt in the sense that they received money bribes but they are nevertheless, according to the author, "able servitors of the ruling economic forces." (See pp. 8 and 9).

If any of the justices who most of us have believed were patriots have

escaped impalement at the author's hands that fact has escaped the present reviewer. Thus, in the chapter entitled "The Authentic John Marshall," the great chief justice is pictured as engaged in corrupt conspiracy with Justice Story, whereby Marshall traded off the decision of *Fletcher v. Peck*, 6 Cranch 87, in which Story is supposed to have benefited, for the decision in the case of *Hunter v. Fairfax's devisee*, 7 Cranch. 603, in which case Story gave the opinion which it is said enabled Marshall to obtain possession of the Fairfax estate. In fact all of the court at this time were corrupt, for each in turn was called upon, sometimes in collusive suits, to render an opinion whereby some other member of the court made dishonest gains. And so the dreary story continues to the end.

The remarkable investigation of insurance frauds in New York, conducted by Mr. Hughes, later Mr. Justice Hughes, far from being the public service which most of us had supposed it to be, was in reality, according to our author, a means of so depreciating the stock of the insurance companies that Thomas F. Ryan, a former client of Mr. Hughes' firm, was enabled to buy the controlling interest in these properties at artificially low figures. (See pp. 756 et seq.). Mr. Justice Harlan, it was admitted, died a poor man, nevertheless instead of being the champion of the people he appeared to be, he was "a reactionary regarding almost every question but that of the Negro race." (P. 779.)

It is true that the court occasionally has rendered just decisions in favor of popular rights, as in the cases upholding the Employers' Liability Act in 1912 and in the case regarding the Oregon Initiative and Referendum decided in the same year. But all such decisions were due to the pressure of public opinion brought home to the justices personally with a strength which they dared not resist. (See pp. 780-781.)

No one doubts that economic and social forces and economic and sociological doctrines have had much to do with governmental and legal institutions in all times. It could not of course be otherwise. Undoubtedly, too, judges like other men are influenced by their associations, their political theories and their own views of life. And while sometimes they are prejudiced and sometimes led to unwise or even unfair conclusions, on the whole it is as fortunate as it is inevitable that they are unable to divest themselves of human emotions and human ways of thinking. The fundamental fallacy in the kind of work of which Mr. Myers' book is an extreme type arises out of attributing sordid motives in all cases in which it is possible to suppose that such motives influenced the conduct of the persons whose work is being examined. Professor Beard's recent book entitled *The Economic Interpretation of the Constitution* is a much more scholarly and disinterested essay of the same general kind, and yet it too reaches some erroneous conclusions, as is shown by Professor Latané's review in the November number of the *American Political Science Review*.

Undoubtedly our Supreme Court justices have erred in judgment, and perhaps they have sometimes been even improperly biased, but conceding that this may be the case is by no means to justify such a book as that under review.

H. M. B.